

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MAY 13, 2014

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, May 13, 2014, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Michael H. Vincent	President
Samuel R. Wilson, Jr.	Vice President
George B. Cole	Councilman
Joan R. Deaver	Councilwoman
Vance Phillips	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 220 14
Amend
and
Approve
Agenda**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to amend the Agenda by deleting “Executive Session – Job Applicants’ Qualifications and Personnel pursuant to 29 Del. C. §10004(b)” and by deleting “Possible Action on Executive Session Items”, and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Minutes

The minutes of May 6, 2014 were approved by consent.

**Corre-
spondence**

Mr. Moore read the following correspondence:

**DEL-MAR-VA COUNCIL BOY SCOUTS OF AMERICA,
WILMINGTON, DELAWARE.**

RE: Letter in appreciation of grant.

**SHECHINAH, INC. EMPOWERMENT CENTER, GEORGETOWN,
DELAWARE.**

RE: Letter in appreciation of grant.

**Corre-
spondence
(continued)**

Mrs. Deaver read the following correspondence:

**DELAWARE TECHNICAL & COMMUNITY COLLEGE,
GEORGETOWN, DELAWARE.
RE: Letter in appreciation of grant.**

**American
Legion
Memorial
Poppy**

Pauline Law was in attendance on behalf of the American Legion Auxiliary Post #28 to present poppies to the Council. Ms. Law stated that the poppy program helps veterans and their families. Ms. Law introduced Miss Poppy, Paris Parks, a 14 year-old student.

On behalf of the Council, Mr. Cole presented a donation to the poppy program.

**Agenda
Change**

The Agenda item entitled “Proclamation – Community Action Month” was delayed.

**Adminis-
trator’s
Report**

Mr. Lawson read the following information in his Administrator’s Report:

1. Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County

The Advisory Committee on Aging & Adults with Physical Disabilities for Sussex County will meet May 19 at 10:00 a.m. at the Sussex County West Administrative Complex, 22215 North DuPont Boulevard, in Georgetown. Amber B. Woodland, Esquire, Procino-Wells & Woodland, LLC, will be speaking on “*Estate Planning*.”

The Advisory Committee’s Conference Planning Subcommittee will also meet May 19 at 11:30 a.m. at the West Complex.

A copy of the agenda for both meetings is attached.

2. Sussex County Emergency Operations Center Call Statistics – March and April 2014

Attached please find the call statistics for the Fire and Ambulance Callboard for March and April 2014. There were 29,045 total calls handled in the months of March and April. Of those 9-1-1 calls in March and April, 77 percent and 78 percent, respectively, were made from wireless phones.

[Attachments to the Administrator’s Report are not attachments to the minutes.]

**Update and Discussion/
Supreme Court
Decision
on Town of Greece,
New York v. Galloway**

Mr. Moore distributed a memo that he prepared for the purpose of providing information on the U.S. Supreme Court's decision in the case of Town of Greece, New York v. Galloway and what effect that decision has on the Consent Order entered in Mullin, et al. vs. Sussex County, DE, et al., dated September 12, 2012.

Mr. Moore discussed how cases are decided in Appellate Courts:

The Courts examine the record below (the decision of the lower Court) to determine if there is an error in the lower Court's application of the law. In making that determination, they often go into great detail concerning the specific facts of that case and discuss how they are, or are not, consistent with current case law. There is often a detailed discussion of relevant cases and a comparison with, or a distinction from, the facts of those cases. The decisions are very fact specific.

Mr. Moore reported that, in the current case, Town of Greece, New York vs. Galloway et.al., the Town opened its meetings with prayer. There was not one specific prayer every meeting, as was the case with Sussex County. Instead, in the Greece case, local clergy were invited to give the invocation prior to the meeting. The Town clerk went through the directory and called local clergy until the clerk found someone available. Later, a list was compiled listing those who agreed to volunteer to say the prayers at future meetings. The Court went on to point out that they "at no point excluded or denied an opportunity to a would-be prayer giver. Its leaders maintained that a minister or layperson of any persuasion, including an atheist, could give the invocation. But nearly all the congregations in town were Christian, and from 1999 to 2007, all of the participating ministers were too.

After respondents complained that Christian themes pervaded the prayers, to the exclusion of citizens who did not share those beliefs, the town invited a Jewish layman and the chairman of the local temple to deliver prayers. A Wiccan priestess who had read press reports about the prayer controversy requested and was granted an opportunity to give the invocation."

Thus, it was clear that the Town was open and non-exclusive in allowing other faiths to participate.

In arriving at its decision, the Court stated the following:

1. That legislative prayer, even though religious in nature, has long been understood as compatible with the Establishment Clause.
2. That the Town did not review any of the Prayers, which is important because the Town should not censor speech. The court clearly indicated that it did not want legislative bodies reviewing prayers for content.
3. The Town was open to all prayers – even Atheist and Wiccan.
4. The Court went on to state: "Absent a pattern of prayers that over time denigrate, proselytize, or betray an impermissible government

**Update and Discussion/
Supreme Court
Decision
on Town
of Greece,
New York
v. Galloway
(continued)**

purpose, a challenge based solely on the content of a particular prayer will not likely establish a constitutional violation. Finally, so long as the town maintains a policy of nondiscrimination, the Constitution does not require it to search beyond its borders for non-Christian prayer, givers in an effort to achieve religious balancing.”

5. The Court also stated that: “That its purposes are to lend gravity to public proceedings and to acknowledge the place religion holds in the lives of many private citizens. Furthermore, the principal audience for these invocations is not the public, but the lawmakers themselves. And those lawmakers did not direct the public to participate, single out dissidents for opprobrium, or indicate that their decisions might be influenced by a person’s acquiescence in the prayer opportunity.”

Mr. Moore stated that, all of this is very important because it indicated that prayer is permissible within the parameters set forth in the case.

Mr. Moore discussed how this affects Sussex County.

1. The Court decision reads as follows: “The town of Greece does not violate the First Amendment by opening its meetings with prayer that comports with our tradition and does not coerce participation by non-adherents. The judgment of the U.S. Court of Appeals for the Second Circuit is reversed. It is so Ordered.”
2. Though the Supreme Court case affirms the right to have prayers in legislative cases, the Sussex County case was different in that the same prayer was given each week.
3. The Council did enter into a Consent Order that did allow the Council to continue its tradition of prayers before meetings. As such, if the County changes its practice, the County does need to seek the Court’s permission.
4. The first step for Council is to decide if the body wants to change the prayer that it is currently using.
5. If the Council, as a body decides that it does want to ask the Court for relief from the Consent Order, then the Council needs to decide what kind of relief to ask for. If so, Mr. Moore recommended that Scott Shannon, Esq., of the firm of Marshall, Dennehey, Warner, Coleman, and Goggin be part of the strategy discussions. (Mr. Shannon was the lead counsel in the litigation.)

The Council discussed Mr. Moore’s summary of the Greece case and how it relates to Sussex County’s case. Questions were raised by Council and answered by Mr. Moore. [This discussion can be heard on the audio recording of this meeting which is available on Sussex County’s website at www.sussexcountynj.gov.]

**Update &
Discussion/
Supreme
Court
Decision
on Town
of Greece,
New York
v. Galloway
(continued)**

Mr. Phillips questioned if it would be appropriate to discuss this matter in Executive Session since it relates to past litigation. Mr. Moore responded that, if the Council decides as a body to seek relief from the Court Order, it would be permissible to discuss strategy in Executive Session; however, any vote must be in open session.

Mr. Cole expressed concern about the legal costs associated with asking for relief and he questioned what relief the County would be seeking.

Mr. Wilson stated that the Supreme Court has made a ruling and he questioned why the Council has to “bow down to a lower court”.

Mr. Phillips stated that he thought there was sentiment on the Council to at least consider asking for relief from the Consent Agreement and he asked that the matter be discussed in Executive Session on May 20th. He asked that the County Administrator contact the Beckett Fund and the Alliance for Liberty to see if they will provide pro-bono services again. Mr. Phillips also commented that, possibly, Scott Shannon, Esq., should participate in the Executive Session. Mrs. Deaver stated that this is not a consensus of the entire Council.

**Procla-
mation**

A Proclamation entitled “*PROCLAIMING THE MONTH OF MAY AS COMMUNITY ACTION MONTH*” was presented to Bernice Edwards, Executive Director of First State Community Action Agency. Ms. Edwards thanked the Council for its continued support.

**Legislative
Update**

Hal Godwin, Deputy County Administrator, presented the following legislative update:

House Bill No. 316 – “AN ACT TO AMEND TITLE 9 OF THE DELAWARE CODE RELATING TO THE RESPONSIBILITIES AND GENERAL POWERS OF THE COUNTY GOVERNMENTS”

Mr. Godwin reported that, last week, the Bill was tabled in Committee to allow time for the counties to meet and discuss the legislation.

**Old
Business/
CZ
No. 1744**

The Council considered Change of Zone No. 1744 filed on behalf of Phillips Cross and Prentice Watkins.

The Planning and Zoning Commission held a Public Hearing on this application on February 27, 2014 at which time the Commission recommended that the application be approved.

The County Council held a Public Hearing on this application on March 25, 2014 at which time action was deferred.

(continued) **Shane Abbott, Assistant Director of Planning and Zoning, read a summary of the Planning and Zoning Commission's Public Hearing.**

M 221 14
Adopt
Ordinance
No. 2351/
C/U
No. 1744
A Motion was made by Mr. Cole, seconded by Mr. Phillips, to Adopt Ordinance No. 2351 entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.85 ACRES, MORE OR LESS" (Tax Map I.D. 235-30.00-55.00) (Conditional Use No. 1744) filed on behalf of Phillip Cross and Prentice Watkins.

Motion Adopted: 3 Yeas, 2 Nays.

**Vote by Roll Call: Mrs. Deaver, Nay; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Nay**

Grant
Requests
Mrs. Jennings presented grant requests for the Council's consideration.

M 222 14
County-
wide
Youth
Grant
A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give \$1,000.00 from the Countywide Youth Grant Account to the Children of the Delaware National Guard for youth camp expenses.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

M 223 14
Grant
A Motion was made by Mr. Phillips to give \$6,000.00 from the Countywide Youth Grant Account to the Delaware Community Foundation for *Heart in the Game* community access programs (awareness programs of Sudden Cardiac Arrest in children and young adults).

Motion
Failed
There was no Second and the Motion Failed.

M 224 14
Grant
A Motion was made by Mrs. Deaver to give \$500.00 (\$125.00 each from Mr. Cole's, Mr. Phillips', Mr. Vincent's and Mr. Wilson's Councilmanic Grant Accounts) to the Delaware Police Chiefs Foundation for seminar expenses.

Motion
Failed
There was no Second and the Motion Failed.

M 225 14
Council-
manic
Grant
A Motion was made by Mr. Cole, seconded by Mr. Wilson, to give \$500.00 (\$100.00 from each Councilmanic Grant Account) to the Delaware Police Chiefs Foundation for seminar expenses.

**M 225 14
(continued)**

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 226 14
Council-
manic
Grant**

A Motion was made by Mrs. Deaver, seconded by Mr. Cole, to give \$700.00 (\$500.00 from Mr. Vincent's Councilmanic Grant Account, \$100.00 from Mrs. Deaver's Councilmanic Grant Account and \$100.00 from Mr. Phillips' Councilmanic Grant Account) to Eastern Shore AFRAM Festival to sponsor the 2014 festival.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 227 14
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$3,500.00 (\$2,500.00 from Mr. Cole's Councilmanic Grant Account and \$1,000.00 from Mrs. Deaver's Councilmanic Grant Account) to West Rehoboth Community Land Trust for their housing initiative.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

**M 228 14
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to give \$500.00 (\$166.66 from Mr. Cole's Councilmanic Grant Account, \$166.67 from Mrs. Deaver's Councilmanic Grant Account, and \$166.67 from Mr. Vincent's Councilmanic Grant Account) to the NAACP to support their 2014 activities, i.e. workshop, convention.

Motion Adopted: 4 Yeas, 1 Nay. (corrected on 5/27/14)*

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Nay; (corrected on 5/27/14)*
Mr. Vincent, Yea**

**M 229 14
Council-
manic
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$1,000.00 (\$500.00 each from Mr. Cole's and Mr. Phillips' Councilmanic Grant Accounts) to the Mid-Atlantic Symphony Orchestra Society for concert expenses.

Motion Adopted: 5 Yeas.

**M 229 14
(continued)**

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**M 230 14
Council-
manic
Grant**

A Motion was made by Mr. Wilson, seconded by Mrs. Deaver, to give \$7,500.00 from Mr. Wilson's Councilmanic Grant Account to the Historic Georgetown Association for expenses for the restoration of the old firehouse and for expenses to complete the parking area site work and fencing.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**Grant
Request**

Mr. Phillips requested that the Council revisit the grant request for *Heart in the Game*.

**M 231 14
County-
wide
Youth
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Wilson, to give \$5,000.00 from the Countywide Youth Grant Account to the Delaware Community Foundation for *Heart in the Game* community access programs (awareness programs of Sudden Cardiac Arrest in children and young adults).

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea

**Introduction
of Proposed
Ordinance**

Mrs. Deaver introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A FACILITY FOR OUTDOOR ENTERTAINMENT EVENTS WITH TEMPORARY CAMPING FACILITIES DURING EVENTS ONLY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING APPROXIMATELY 500 ACRES, MORE OR LESS, OF TWO PARCELS CONTAINING 1,057.6 ACRES" (Conditional Use No. 1991) filed on behalf of Cool Spring, LLC / Highway One. (Tax Map I.D. 234-15.00-22.00 and 234-9.00-34.00).

The Proposed Ordinance will be advertised for Public Hearing.

**Additional
Business**

Under Additional Business, Dan Kramer commented on the Court ruling (Town of Greece, New York v. Galloway); he stated that, in that town (Greece), the Council themselves did not pray. He also stated that Council (Sussex) should discuss the matter in public session, not Executive Session.

**Additional
Business
(continued)**

Under Additional Business, Bob Harrison commented on the County Council's prayer practice and the Supreme Court's recent decision on prayer. Mr. Harrison submitted his comments, in writing, to the County Attorney.

**M 232 14
Adjourn**

A Motion was made by Mr. Cole, seconded by Mrs. Deaver, to adjourn at 11:03 a.m.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mrs. Deaver, Yea; Mr. Cole, Yea;
Mr. Phillips, Yea; Mr. Wilson, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**

